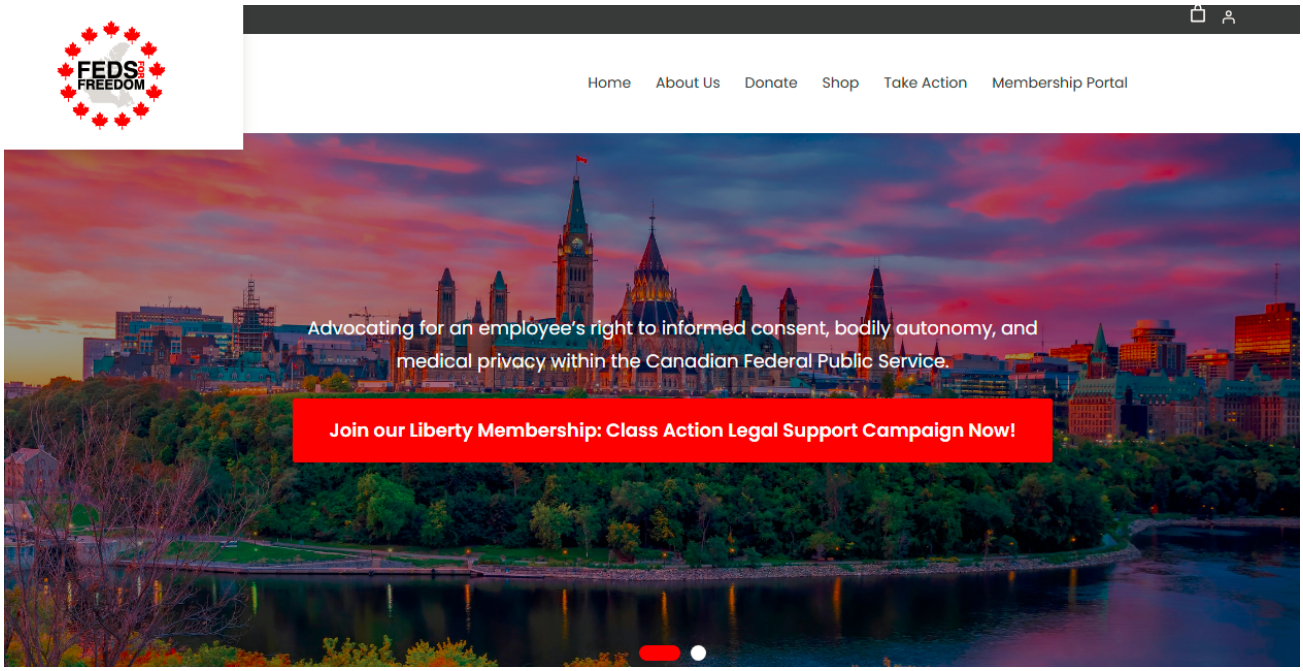
CANUCK LAW
Reporting That You're Not Getting Elsewhere (Do Your Own Research To Verify)

NOVEMBER 15, 2025 BY RONNIE

Court Of Appeal Overturns Payne, Tosses Case …. On The Spot?


FEDS FOR FREEDOM
Home
About Us
Donate
Shop
Take Action
Membership Portal
Advocating for an employee's right to informed consent, bodily autonomy, and medical privacy within the Canadian Federal Public Service.
Join our Liberty Membership: Class Action Legal Support Campaign Now!

Recently, the Federal Court of Appeal overturned a ruling of the Lower Court, which had permitted an employment case to advance. Just after the new year, Justice Southcott stunned many by allowing a lawsuit brought by Federal workers to proceed. It brought some hope.

The hearing took place on October 23rd, 2025. Normally, the Court of Appeal takes weeks, if not months to hand down a ruling. Very unusually, it issued one the same day. While Justice Southcott was willing to let the case proceed, this Panel wasn't.

In a short ruling, the Appeal was granted, and the case struck in its entirety.

This was a Proposed Class Action brought by the group Feds4Freedom. It was on behalf of workers who had lost their jobs or otherwise had been punished for refusing the injection mandates back in 2021. Typically, lawsuits brought by Government employees don't get far at all.

> Right of employee
> 208 (1) Subject to subsections (2) to (7), an ***employee is entitled to present an individual grievance if he or she feels aggrieved***
> (a) by the interpretation or application, in respect of the employee, of
> (i) a provision of a statute or regulation, or of a direction or other instrument made or

issued by the employer, that ***deals with terms and conditions of employment***, or
(ii) a provision of a collective agreement or an arbitral award; or
(b) as a ***result of any occurrence or matter affecting his or her terms and conditions of employment***.

No Right of Action
Disputes relating to employment
.
236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is ***in lieu of any right of action that the employee may have*** in relation to any act or omission giving rise to the dispute.

These challenges were based on Sections 208 and 236 of the FPSLRA, or Federal Public Sector Labour Relations Act. Put simply, employees have the right to *grieve* and to arbitrate, but not to *litigate*. They have no access to the Courts.

This case was different in that it attacked not the "vaccine passports" themselves, but the way in which they were implemented. There was no meaningful consultation, negotiation, collective bargaining, or accommodation, as mandates were simply imposed. If this sounds like a union argument, it is.

See Parts 1, 2, 3, 4, 5, 6, and 7 in this series on s.2(d) challenges.

There are several Proposed Class Actions at various stages, and they all incorporate some version of Section 2(d), or freedom of association. This is based on the idea that employers and employees have the right to do business as they see fit, without justifiable interference.

The Free2Fly (Hill) case was also brought in Federal Court and survived a preliminary challenge. But the key distinction is that these were airline employees, who were ***Federally regulated***, but not members of the Government. As such, the FPSLRA didn't apply to them. It was still a s.2(d) case, but based on inducement to breach a contract.

Brief Timeline Of Major Events In Case

October 6th, 2023: Statement of Claim is filed on behalf of 3 Representative Plaintiffs.

November 9th, 2023: Government responds with their Notice of Intent.

May 31st, 2024: Government sends notice that it intends to bring Motion to have the case struck (thrown out) in its entirety.

June 6th, 2024: Prothonotary Ring gives directions that there be case management.

June 10th, 2024: Chief Justice Crampton directs (a) Justice Southcott and (b) Prothonotary Ring to be assigned manage the proceeding.

July 1st, 2024: Prothonotary Ring issues schedule for documents to be served for Motion to Strike.

August 19th, 2024: Government brings its Motion to Strike.

October 1st, 2024: Plaintiffs file responding arguments as to why case shouldn't be struck.

December 13th, 2024: Motion to Strike is argued before Justice Southcott.

January 1st, 2025: Justice Southcott *partially* grants the Motion to Strike. The tort of Malfeasance of Public Office is struck, but with Leave if eligible Plaintiffs are identified. The Section 2(d) claims are allowed to proceed.

January 13th, 2025: Notice of Appeal is filed.

January 21st, 2025: Notice of Appearance is filed.

February 12th, 2025: Parties file their agreement as to what the contents of the Appeal Book will be. This is a requirement unique to the Federal Court of Appeal.

March 14th, 2025: The Appeal Book is filed.

April 14th, 2025: Appellants file their written arguments.

May 14th, 2025: Respondents file their written arguments.

October 23rd, 2025: Hearing takes place at Federal Court of Appeal

October 23rd, 2025: Panel immediate throws the case out.

This is *extremely* unusual to get a ruling out the same day. Considering the complexity and nuance of labour law, one would think they'd need more time. Also, this ruling was to ***overturn*** that of the Federal Court, not to ***confirm*** it.

More bizarrely, this is the same Appellate Court that expanded the relief available in the Adelberg case, previously ruled "bad beyond argument". They overturned Justice Fothergill, allowing the travel claims to proceed.

Payne Part Of Series Of s.2(d) Challenges In Canada

CASE NAMES	Feds4F/BCPSEF	Free2Fly/UHCWBC/UHCWO
Government Workers?	Yes	No
Filed Federally?	Feds4F	Free2Fly
Filed in B.C.?	BCPSEF	UHCWBC
Filed in Ontario.?	n/a	UHCWO
Wrongful Termination by Gov't?	Yes	No
Inducement to Breach Contract?	No	Yes
Breach s.2(d) Charter Rights?	Yes	Yes
Malfeasance of Public Office?	Yes	Yes

While Payne (Feds4Freedom) could theoretically be overturned by the Supreme Court of Canada, it's an uphill battle. The Court refuses the vast majority of Applications it receives. On the other hand, the consequences are potentially huge:

If jurisdiction is awarded: it means that Federal workers will have at least an opportunity to sue if the terms of employment are upended, without any negotiation or collective

bargaining. There will be some sort of reprieve available.

If jurisdiction is refused: it means the last realistic path for Federal workers to take any type of employment claim litigation would be extinguished. Regardless of circumstances, there will be no option at all for relief.

> [14] Therefore, we will allow the appeal ***with costs here and below***, set aside the judgment of the Federal Court, and strike the Claim in its entirety for want of jurisdiction without leave to amend.

And just to twist the knife a little more, the Court of Appeal is permitting costs for this *and* for the previous decision. “and below” is presumably referring to Justice Southcott’s ruling, which forced everyone to pay their own costs. Good way to deter others from filing.

There has been no announcement yet as to whether or not they will attempt to seek Leave with the S.C.C., but there’s still time to decide.

CANADA, CANADIAN DECISIONS, EMPLOYMENT, PROCEDURAL, S.2(D), VACCINES